# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1944**

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# No. 110

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CHASE SECURITIES CORPORATION, NOW KNOWN AS AMEREX HOLDING CORPORATION,

*Appellant,*

*vs.*

(RUTH CHASE DONALDSON), FRANK A. DONALDSON AND FRANK A. DONALDSON, JR., EXECUTORS OF THE ESTATE OF RUTH CHASE DONALDSON, DECEASED, SUBSTITUTED AS RESPONDENTS.

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APPEAL FROM THE SUPREME COURT OF MINNESOTA.

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## JURISDICTIONAL STATEMENT.

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# SUPREME COURT OF THE UNITED STATES

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## No. 110

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*Appellant,*

*vs.*

(RUTH CHASE DONALDSON), FRANK A. DONALDSON AND FRANK A. DONALDSON, JR., EXECUTORS OF THE ESTATE OF RUTH CHASE DONALDSON, DECEASED, SUBSTITUTED AS RESPONDENTS,

*Appellees.*

## JURISDICTIONAL STATEMENT.

Appellant, having this day filed its Petition for Appeal and Assignment of Errors in the above entitled cause for an appeal from the judgment of the Supreme Court of the State of Minnesota, entered herein on the 23rd day of February, 1944, presents the following statement, pursuant to Rule 12 of the Rules of the Supreme Court of the United States, showing that the Supreme Court of the United States has jurisdiction to review said judgment on

appeal and that such jurisdiction should be exercised in this case:

I.

**Statutory Provision Sustaining Jurisdiction.**

The jurisdiction of this court is invoked under Section 237(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. Sec. 344(a)), and, also, in the alternative, under Section 237(c) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. Sec. 344(c)), as a petition for certiorari, if the case is not the proper subject of a petition for appeal under said Section 237(a).

II.

**The Minnesota Statute Whose Validity Is Involved.**

*Minnesota Statutes*, 1941, Section 80.26 was passed as Section 18, Chapter 547, Laws of Minnesota for 1941, being a part of a general revision of the Minnesota Securities Law. It provides:

> "3996-24. Other actions or prosecutions not limited. No action shall be maintained for relief upon a sale of securities made in violation of any of the provisions of this act, or upon a sale of securities made in violation of any of the provisions of a registration thereof under this act, or for failure to disclose that the sale thereof was made in violation of any of the provisions of this act or in violation of any of the provisions of a registration thereof under this act, or upon any representation with respect to the registration or non-registration of the security claimed to be implied from any such sale, unless commenced within six years after the date on which said securities were delivered to the purchaser pursuant to such sale, *provided that if, prior to the effective date of this section, more than five years shall have elapsed from the date of such delivery, then*

*such action may be brought within a period of one year following such effective date*, and provided further that no purchaser of a security otherwise entitled thereto shall bring any action for relief of the character above set forth who shall have refused or failed, within 30 days after the receipt thereof by such purchaser, to accept a written offer from the seller or from any person who participated in such sale to take back the securities in question and to refund the full amount paid therefor by such purchaser, together with interest on such amount from the date of payment to the date of repayment, such interest to be computed at the same rate as the fixed interest or dividend rate, if any, provided for in such securities, or, if no rate is so provided, at the rate of six per centum per annum, less in every case the amount of any income received by the purchaser on such securities. Any written offer so made to a purchaser of a security shall be of no force or effect unless a duplicate thereof shall be filed with the commissioner of securities prior to the delivery thereof to such purchaser.

Nothing in this section, except as herein expressly set forth, shall limit any other right of any person to bring any action in any court for any act involved in or right arising out of a sale of securities or the right of the state to punish any person for any violation of law."

The judgment from which this appeal is taken is based particularly upon the portion of the above statute which is here italicized.

## III.

## Date of Judgment Sought to Be Reviewed and Date On Which Application for Appeal Is Presented.

The judgment sought to be reviewed by this petition was a final judgment, entered by the Supreme Court of the State of Minnesota on the 23rd day of February, 1944. The Supreme Court of the State of Minnesota is the highest court of that state in which a decision can be had.

This application for appeal is presented on the 22d day of April, 1944.

## IV.

## The Nature of the Case and Rulings of the Court On Federal Questions.

1. *General Nature.*

The action was brought in District Court, Fourth Judicial District, State of Minnesota, in November, 1937, to recover the purchase price of certain combined shares of stock of appellant (then known as Chase Securities Corporation) and The Chase National Bank of the City of New York, which were sold by appellant to appellees' testate [1] in Minneapolis on August 10, 1929. The suit was based on two separate grounds; first, that the sale of the security, without registration under the Securities Law of Minnesota (Chapter 80, Minn. Stat. 1941, then known as Sec. 3996-1 to 28, Mason's 1927 Minn. Stat.), was in violation of that law and void, and second, that appellant committed common law fraud in sale misrepresentations.

2. *Rulings of Trial Court and Prior Appeal to Minnesota Supreme Court.*

The case was tried by the court without a jury in the late spring of 1939, on both general grounds. On April 18, 1940, the trial court made findings of fact and conclusions of law on the one issue only of statutory violation, holding that the stock was subject to the registration provisions of the Minnesota Blue Sky Law; that such law was violated by failure to register the stock; and that the six year statute of limitations, expressly covering actions

[1] While the second appeal in the state court was pending, the plaintiff died and appellees were substituted as her representatives. The designation "appellee" is here used.

"upon a liability created by statute" (Mason's 1927 Minn. Stat., Sec. 9191, subdiv. 2, see text in Appendix A, p. 29) had been tolled by the withdrawal of appellant from Minnesota in 1931, even though such withdrawal had been effected in accordance with the applicable Minnesota statutes. (See Findings of Fact, Conclusions of Law and Order for Judgment, dated April 18, 1940).

From the judgment entered on these findings on June 18, 1940, appellant appealed to the Supreme Court of the State of Minnesota.

On January 10, 1941, that court reversed the trial court judgment, holding (by reference to the companion case of *Pomeroy* v. *National City Company*, 209 Minn. 155, 296 N. W. 513, see opinion in Appendix B, p. 29,) that the cause of action, predicated upon a violation of the registration provisions of the securities law, had been barred by such six year statute of limitations, and that the withdrawal of appellant from Minnesota (having left agents for service of process as required by the Minnesota Corporation and Blue Sky Laws) did not toll the statutory period. A judgment reversing the trial court judgment of June 18, 1940 was entered by the State Supreme Court on March 7, 1941, and the case was remanded for determination of the remaining issue of fraud. *Donaldson* v. *Chase Securities Corporation*, 209 Minn. 165, 296 N. W. 518.[2] (See opinion in Appendix C, p. 40 and judgment of reversal and mandate in Appendix D, p. 41.)

[2] On the authority of this judgment of the Minnesota Supreme Court, this Court reversed the decision of the Circuit Court of Appeals for the Eighth Circuit on the same question in *Joseph H. Vogel* v. *Chase Securities Corporation*, 110 F. (2d) 607, and remanded the case "for further proceedings with respect to any questions not determined by the Supreme Court of Minnesota in the Pomeroy and Donaldson cases." *Chase Securities Corporation* v. *Vogel* (1941), 312 U.S. 666, 85 L. Ed. 1110, 61 S. Ct. 823.

*3. Rulings of Trial Court After Remand*

On April 9, 1941, appellee filed a motion in the trial court "for an order supplementing and correcting" the previous findings of April 18, 1940, with reference only to the claim of fraud. (See motion of appellee, dated April 9, 1941).

While such motion was pending and on April 22, 1941, the Minnesota legislature enacted a general revision of the Blue Sky Law, known as Chapter 547, Laws of 1941, which became law on April 28, 1941. Section 18 thereof, although entitled as an amendment of Section 3996-24, Mason's 1927 Minn. Stat., was substantially a new section providing a specific statute of limitations for Blue Sky actions. It is quoted above, in Section II of this Jurisdictional Statement.

The parties in May, 1941, then served and filed cross-motions for amended findings, appellee moving that the findings be amended to include an additional paragraph to the effect that appellee's cause of action, based on a violation of the Blue-Sky law, was "revived" by the above mentioned 1941 Statute (see Appendix E, p. 43.)

Appellant made appropriate motion for findings in its favor and objected specifically to this proposed finding of revival, upon the ground that the statutory cause of action had already been adjudged barred by the State Supreme Court in this very case under the then existing statute of limitations, and that the 1941 law did not apply to this case and could not revive such barred action (See Appendix F, p. 44).

The above motions and these grounds specifically, were argued at length to the trial court, orally and by brief.

The trial court, on June 27, 1942, filed findings of fact and conclusions of law for appellee, and, on the reasserted

cause of action for statutory violation, found (third paragraph of Finding XXXII):

> "In so far as the provisions of Laws of Minnesota 1941, Chapter 547, Sec. 18 (Mason's Stat. 1927, Secs. 3996-24, as amended) are applicable to plaintiff's cause of action, or any of the separate grounds for relief asserted by plaintiff, the time for assertion thereof or commencement of an action thereon was extended by said statute to July 1, 1942, and plaintiff's action was duly commenced within the time limited by the statutes of the State of Minnesota."

Appellant on September 8, 1942, moved for amended findings of fact and conclusions of law, or a new trial as follows:

(a) To amend the court's finding as to the 1941 law by striking out the entire paragraph XXXII and conclusions of law and substituting in lieu thereof a conclusion of law that the action was barred and not revived by the 1941 law, upon these grounds: that there was no competent evidence to support such finding of fact or conclusions of law, that the cause of action, if any, for violation of the securities law was barred by the final adjudication of the State Supreme Court in this very case, that the cause of action was barred by the applicable statute of limitations, that the 1941 law could not apply to this case and did not and could not revive the barred cause of action, and if so applied, it would deprive appellant of its property without due process of law in violation of the provisions of Section 1 of the Fourteenth Amendment to the United States Constitution; and upon the errors in the findings of fact and conclusions of law that the 1941 Statute applied to and revived the cause of action upon the same grounds (See Appendix G, P. 45.)

These alternative motions, including the grounds above summarized and specifically set forth in Appendix G, were argued to the trial court, orally and by memorandum. However, they were denied in their entirety (See order, dated November 18, 1942), and judgment for appellee was entered on November 25, 1942.

4. *The Second Appeal to Minnesota Supreme Court, Resulting In Judgment Upon Which This Appeal Is Based.*

On the second appeal to the Supreme Court of Minnesota, appellant assigned as errors: the denial of appellant's alternative motions for amended findings of fact, conclusions of law and order for judgment, or for a new trial in its favor; the making of Finding of Fact XXVII to the effect that the 1941 statute applied and extended the appellee's time to bring the action; and the denial of appellant's motion to strike said finding and conclusions of law based thereon, or for a new trial; and the denial of appellant's motion to substitute a conclusion of law that the action was barred and not revived by the 1941 law (See Appendix H, p. 48.

These assignments of error, summarized above and specifically set forth in Appendix H, were argued in the briefs of both parties. Appellant stressed specifically the absence of legislative power, under the due process clause of both state and federal constitutions, to revive a barred cause of action, especially where the State Supreme Court had already adjudged that appellee's cause of action for violation of law no longer existed.

The State Supreme Court rendered its decision on December 31, 1943, a copy of which is attached as Appendix I, p. 50. It held: (a) that appellant's failure to register the stock in Minnesota in 1929 constituted a violation of the securities law, (b) that the legislature had in mind this

appellant and its sales of stock in this state in 1929 and specifically intended to overcome the effect of the decision on the prior appeal in this case and in the companion case of *Pomeroy* v. *National City Co.*, and to allow purchasers of such stock one year from July 1, 1941, to commence suits against this appellant on causes of action for statutory violation as to sales of this particular stock, and (c) that the legislature had the power under the due process clauses of both state and federal constitutions to revive plaintiff's cause of action in this very case, already declared barred by the court on the prior appeal. The principal authority cited for these conclusions was the case of *Campbell* v. *Holt*, (1885) 115 U. S. 620, 29 L. Ed. 483, 6 S. Ct. 209, concerning which the Minnesota Supreme Court said, in part:

> "We do not find that Campbell v. Holt has been reversed or reconsidered and we regard it as sound law; and, certainly, so far as the federal constitution is concerned, it is binding on this court until reversed by the Supreme Court".

The opinion said that the rule of the case of *Danzer & Co., Inc.* v. *Gulf & Ship Island Ry. Co.*, (1925) 268 U. S. 633, 69 L. Ed. 1126, 45 S. Ct. 612, was not applicable.

The decision was based solely on this one issue. Judgment for appellee for the purchase price of the stock was affirmed.

Appellant filed a petition for rehearing, wherein it again contended that the statute, as so construed by the court, denied appellant its property without due process of law as guaranteed by the due process clause of Section One of the Fourteenth Amendment to the Constitution of the United States for the reasons above stated. Appellant also contended that the law, as now construed and applied by the court, denied appellant the equal protection of the

laws, as guaranteed by the equal protection clause of Section One of the Fourteenth Amendment to the Constitution of the United States in that such law, as so construed, constituted class or special legislation against appellant and in favor of purchasers of its stock.

Appellant also urged upon the petition for rehearing that the Court's finding that the legislature intended to revive barred claims generally was made without record evidence in support thereof; that the appellant had no opportunity to submit evidence on legislative intent at the original trial (the law not being in existence then); that it was denied the right to do so on its motion for a new trial; that it was entitled to know the facts, if any, of which the lower Court (if it did) and the Supreme Court seemingly took judicial notice; that it was entitled to an opportunity to submit evidence to refute the erroneous assumptions made; and that if the Supreme Court of Minnesota refused to afford appellant such opportunity (by remanding or referring the case for evidence on that issue), appellant would be denied a fair trial and due process of the law in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States (Appendix J, p. 59.

The petition was denied without opinion on the 23rd day of February, 1944, (see Appendix K, p. 61, and the judgment, upon which this appeal is based, was entered on the same day (see Appendix L, p. 62.

The federal questions were properly and promptly raised and preserved in the state courts.

Such judgment is a final judgment of the State Supreme Court, and it does not rest on a state ground which independently and adequately supports it. If the state statute in question, as here construed and applied, is found by this Court to be violative of the due process or equal protection

clauses of the Constitution of the United States, the judgment must be reversed.

V.

**Cases Believed to Sustain Jurisdiction.**

The following decisions of this Court are believed to sustain the jurisdiction of the Supreme Court of the United States on an appeal to review the final judgment here in question, within the provisions of said Section 237 (a) of the Judicial Code, as amended (28 U. S. C. A., Section 344 (a)):

*Dahnke-Walker Milling Co.* v. *Bondurant*, (1921) 257 U. S. 282, 66 L. Ed. 239, 42 S. Ct. 106, involving a question of constitutionality of a state statute as there construed and applied, wherein it was said:

> "'Our conclusion on the jurisdictional question is that, as the state court applied and enforced to the plaintiff's disadvantage a state statute which the plaintiff seasonably insisted as so applied and enforced was repugnant to the Constitution and void, the case is rightly here on writ of error".

There were cited, "for like rulings on like grounds", *Eureka Pipe Line Co.* v. *Hallanan*, (1921) 257 U. S. 265, 66 L. Ed. 227, 42 S. Ct. 101; and *United Fuel Gas Co.* v. *Hallanan*, (1921) 257, U. S. 277, 66 L. Ed. 234, 42 S. Ct. 105.

*Standard Oil Company of California* v. *Johnson*, (1941) 316 U. S. 481; 86 L. Ed. 1611, 62 S. Ct. 1168, wherein it was said:

> "Since validity of the State statute as construed was drawn in question on the ground of its being repugnant to the Constitution, we think the case is properly here in appeal under Sec. 237 (a) of the Judicial Code, 28 U. S. C. A. Sec. 344 (a)".

*Fiske* v. *State of Kansas*, (1927) 274 U. S. 380, 71 L. Ed. 1108, 47 S. Ct. 655.

*New York Ex Rel. Bryant* v. *Zimmerman*, (1928) 278 U. S. 63, 73 L. Ed. 184, 49 S. Ct. 61.

*Doty* v. *Love*, (1935) 295 U. S. 64, 79 L. Ed. 1303, 55 S. Ct. 558.

The question of unconstitutionality of the 1941 law, on the ground of denial of equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution, and the question of denial of a fair trial in violation of the due process clause of the Fourteenth Amendment to the United States Constitution, were first presented in appellant's petition for reargument in the State Supreme Court, after that Court's finding that the Minnesota legislature intended, by the 1941 law, to revive actions specifically against the appellant and the National City Company. This was the first opportunity to raise these questions inasmuch as there had been no clear and unequivocal finding that the 1941 statute applied to the case and no specific finding of such legislative intent by the trial court. The Court denied the petition and, thereby, overruled the contention. The Supreme Court of the United States has jurisdiction on appeal to review the decision on these grounds, also, even though the precise issues were not raised in the trial court:

*Missouri Ex. rel. Missouri Ins. Co.* v. *Gehner*, (1930) 281 U. S. 313, 74 L. Ed. 870, 50 S. Ct. 326.

*Cumberland Coal Co.* v. *Board of Revision* (1931) 284 U. S. 23, 76 L. Ed. 146, 52 S. Ct. 48.

*Home Ins. Co.* v. *Dick*, (1930) 281 U. S. 397, 74 L. Ed. 926, 50 S. Ct. 338.

*Concordia Fire Ins. Co.* v. *Illinois*, (1934) 292 U. S. 535, 78 L. Ed. 1411, 54 S. Ct. 830.

Because this Court has jurisdiction on the appeal, it has jurisdiction to consider, also, the additional assignment of

error pertaining to the denial of a fair trial under the due process clause, which by itself would have been the basis of a writ of certiorari only.

*Prudential Insurance Co.* v. *Cheek* (1921), 259 U. S. 530, at 547, 66 L. Ed. 1044, 42 S. Ct. 516.

*Flournoy* v. *Wiener* (case No. 252, United States Supreme Court), amendatory opinion rendered March 27, 1944, not yet published in official reports.

## VI.

## Statement of Grounds Upon Which It Is Contended That Questions Involved Are Substantial.

SUMMARY.

As a matter of general public policy, the state court decided at least four broad federal questions of legislative and judicial power which are of national importance and significance under the Fourteenth Amendment to the Constitution of the United States:

(a) It decided that a state legislature has the power, within the due process clause of the Fourteenth Amendment, to reverse a judgment of the highest court of the state, as to a party in whose favor the judgment was entered.

(b) It decided that a state legislature has the power within the same clause, to revive a cause of action founded upon breach of a statute, long after that cause of action has been barred.

(c) It decided that a state legislature has the power, within the equal protection clause of the Fourteenth Amendment, to enact a law specifically intended (so the state court found) to reverse a rule of law established by the highest state court for a specific case, so as to allow an arbitrary class of litigants, to maintain pre-

viously barred actions against a particular person or corporation.

(d) It decided that a state court has the power under the due process clause, to decide a question of legislative intent seemingly by judicially noting "facts", but without giving a litigant the opportunity to ascertain and hear such evidence and to dispute such evidence by the other proof or argument.

In net legal effect, the state court has decided that a party aggrieved by a final adjudication against him in the highest state court may, at any time in the future and long after the claim has been barred by all existing law, go to a state legislature and procure the enactment of a statute specifically intended by the legislature not only to revive all barred claims of that kind but to abrogate the very judgment against said party so that he might thereafter reassert his cause of action, and that such legislation would not violate the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

Such a decision raises substantial federal questions which, so far as we can ascertain, have not been decided by this Court. We submit, however, that such decision is contrary, upon legal principle, to the applicable decisions of this Court.

## Points and Authorities.

1. *The state court decision, in holding that the 1941 law, as here construed and applied, does not deprive appellant of his property without due process of law even though it reverses a prior judgment of that court in the same case, presents a federal question of substance.*

The decision is plainly not in accordance with the applicable decisions of this Court.

It has long been the established rule of this Court that a litigant has a vested right in a judgment in his favor which cannot be altered or destroyed constitutionally by an act of a state legislature. *Memphis* v. *United States* (1877), 97 U. S. 293, 24 L. Ed. 920. A vested right in an existing defense is given the same protection. *Pritchard* v. *Norton* (1882), 106 U. S. 124, 27 L. Ed. 104, 1 S. Ct. 102. Whatever might be the power of a legislature to act upon pending actions or as to proceedings subsequently to be commenced, "when those actions have passed into judgment, the power of the legislature to disturb the rights created thereby ceases". *McCullough* v. *Virginia* (1898), 172 U. S. 102, 43 L. Ed. 382, 19 S. Ct. 134.

The rule has been re-asserted and followed in *Forbes Pioneer Boat Line* v. *Board of Commissioners* (1922), 258 U. S. 338, 66 L. Ed. 647, 42 S. Ct. 325. It has been acknowledged to be well settled, as applied to private rights under a judicial decision, in *Hodges* v. *Snyder* (1923), 261 U. S. 600, 67 L. Ed. 819, 43 S. Ct. 435. It has recently been noted in *Paramino Lumber Co.* v. *Marshall* (1940), 309 U. S. 370, 84 L. Ed. 814, 60 S. Ct. 600 (See Footnote 25 of opinion).

Even *Campbell* v. *Holt* (1885), 115 U. S. 620, 29 L. Ed. 483, 6 S. Ct. 209, which the state supreme court cited as its principal authority for its conclusion, is unanimous in its view that a legislature does not have the constitutional power to abrogate a "vested right".

Here, appellant had a vested right in the decision and judgment of the state court entered on the first appeal in the case, wherein it was held that any cause of action which appellee may have had against appellant for breach of the Minnesota securities law, was barred. The subsequent 1941 law, as here construed, destroyed that right, in violation of the due process clause.

*2. The state court decision, in holding that the 1941 law, as here construed and applied, does not deprive appellant of its property without due process of law even though it revives a statutory cause of action which had become barred by the then applicable statute of limitations, presents a federal question of substance.*

The question of legislative power to revive a statutory cause of action, barred under a statute of limitations expressly covering "a liability created by statute", has never been squarely determined by this Court. The decision, however, is contrary to the clearly stated principles of this Court's applicable decisions.

The state supreme court mistakenly relied upon *Campbell v. Holt* (1885), 115 U. S. 620, 29 L. Ed. 483, 6 S. Ct. 209, in which, by a divided court, it was held that a barred remedy for "violation of an implied contract to pay money" could be constitutionally revived. The rule of the *Campbell* case, however, is not applicable to a case where, as here, the action was a purely statutory one for breach of the securities law.[3] Rather, the right of action created by the Blue Sky statute has been limited by the six-year statute of limitations, expressly covering "a liability created by statute", even though such limitations provision was enacted after

[3] The state supreme court, on the prior appeal, said the action was one founded "upon a liability created by statute". *Pomeroy v. National City Co.* (1941), 209 Minn. 155, 296 N. W. 513. In the opinion which is the basis of this appeal, the state supreme court in its opening paragraph described the action as one in tort based on a violation of the registration provisions of the Blue Sky statute. Numerous previous decisions of the state court had held the action to recover the purchase price of securities for non-registration of stock to be a statutory cause of action, the sale being illegal because not made in compliance with the registration provisions of the Blue Sky Law. *Vercellini v. U. S. I. Realty Co.* (1924), 158 Minn. 72, 196 N. W. 672; *Webster v. U. S. I. Realty Co.* (1927), 170 Minn. 360, 212 N. W. 806; *Edson v. O'Connell* (1934), 190 Minn. 444, 252 N. W. 247; *Mertz v. Hudson-Mfg. Co.* (1935), 194 Minn. 636, 261 N. W. 472.

different time and was located in another place in the statute books. See *Olesen* v. *Retzlaff* (1931), 184 Minn. 624, 238 N. W. 12; *Burzinski* v. *Kinyon Inv. Co.* (1934), 192 Minn. 335, 256 N. W. 233; *Pomeroy* v. *National City Co.* (1941), 209 Minn. 155, 296 N. W. 513. Upon expiration of that period, the cause of action became extinguished. It could not be revived constitutionally by subsequent legislation.

The decision here is contrary, on legal principle, to *Davis* v. *Mills* (1904), 194 U. S. 451, 48 L. Ed. 1067, 24 S. Ct. 692, and to *Danzer & Co.* v. *Gulf & Ship Island Ry. Co.* (1924), 268 U. S. 633, 69 L. Ed. 1126, 45 S. Ct. 612. In the *Davis* case, this court (through Mr. Justice Holmes) considered the *Campbell* case, among others, and then indicated doubt that any proper practical distinction could be drawn between statutes of limitations which extinguish the right itself and those which bar the remedy to enforce such right (194 U. S. 451, at 456-57. It held that the statutory cause of action against directors of a corporation was conditioned by a limitations provision which expressly covered actions "to enforce a liability created by law" (almost identical with the limitations provision in the case at bar), although such provision was enacted "at a different time" and was located in a different title than the statute creating the liability. The *Danzer* case, after citing with approval the *Davis* case, held expressly that a barred cause of action created by statute, which was conditioned by a limitations provision contained in the same statute "or another provision", could not be revived by subsequent legislative act without violating the due process clause. This Court said it was not necessary there to "re-examine the doctrine of *Campbell* v. *Holt* • • • as it is plain that case does not apply. That was an action on a contract for the recovery of money."

We have been unable to find, after diligent search a decision of this Court which has held or even suggested the interpretation put upon the *Campbell* case by the state

court here. In a comparatively recent decision, *Home Insurance Co.* v. *Dick* (1930), 281 U. S. 397, at 409, 74 L. Ed. 926, 50 S. Ct. 338, this Court cited the *Campbell*, *Davis* and *Danzer* cases and then said in footnote 7 of the opinion:

> "Whether a distinction is to be drawn between statutes of limitation which extinguish or limit the right and those which merely bar the remedy, we need not now determine".

The same general question was also raised, but not decided, in *Mid-State Horticultural Co.* v. *Pennsylvania Rd. Co.* (1943), — U. S. —, 88 L. Ed. 83, — S. Ct. —, wherein the *Davis* and *Danzer* cases were again cited.

If, however, it is to be assumed or here found that such interpretation of the *Campbell* case is the correct one, we submit that that decision should be re-examined by this Court, in the light of the dissenting opinion in that case and the refusal of a vast majority of the state courts to follow it, and that it should be over-ruled.

It is significant that the most of the highest state courts, where the question has been raised since *Campbell* v. *Holt*, have expressly followed the principle and reasoning of the dissenting opinion—that the right to set up the bar of a statute of limitations as a defense to *any* cause of action, after the statutory period has run, is a vested right which cannot be taken away constitutionally by subsequent legislative act. At least eleven state supreme courts have so held;[4] in only three states[5] has the majority view of the

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[4] *Wasson* v. *State* (1933), 187 Ark. 537, 60 S. W. (2) 1020; *Bussey* v. *Bishop*, (1929) 169 Ga. 251, 150 S.E. 78; *Board of Education* v. *Blodgett* (1895) 155 Ill. 441, 40 N.E. 1025; *Siefkin* v. *Siefkin*, (1939) 150 Kan. 396, 92 Pac. (2) 1005; *Jackson* v. *Evans*, (1940), 284 Ky. 748, 145 S.W. (2) 1061; *Lohrstorfer* v. *Lohrstorfer* (1905), 140 Mich. 551, 104 N. W. 142; *Wilkes County* v. *Forester*, (1933) 204 N. C. 163, 167 S.E. 691; *Rayner* v. *Comley Lumber Co.* (1934) 169 Okla. 576, 38 Pac. (2) 5; *Cathey* v. *Weaver*, (1922) 111 Tex. 515, 242 S.W. 447; *Re Swan*, (193-

*Campbell* decision been applied to cases not involving special circumstances, such as to relieve a party from a technical procedural mistake or to cover claims by or against a public corporation.[6] Furthermore, none of those three cases involved a statutory cause of action. See annotations in *36 A. L. R. 1317*, and *133 A. L. R. 384*; and *34 Am. Jur. sec. 35, p. 32*; Most of the writers, also, who have considered *Campbell* v. *Holt*, have questioned the theoretical distinction made by the holding of that case and have favored its dissenting opinion. *Lewis' Sutherland, Statutory Construction* (2nd ed.) Vol. 2, sec. 708, p. 1288; *Wood, Limitations* (4th ed.), Vol. 1; sec. 11, pp. 47-49; *24 Columbia Law Review*, 803 (1924); *10 Cornell, L. Q. 212* (1924); *2 Geo. Wash. L. Rev.* 100 (1933). See also, *Rottschaefer, Constitutional Law* (1939), sec. 252 p. 548-9.

So far as we can ascertain, this Court since 1885 has not considered the holding of the *Campbell* case with reference to its soundness as a matter of public policy. Its lack of acceptance by such a preponderance of able state courts and legal commentators raises a legitimate question. Thus far, this Court has followed or approved only its *dicta*—determining that in cases involving title to real estate or personal property, there could be no constitutional revival of a barred cause of action, *Sharon* v. *Tucker* (1892), 144 U. S. 533, 36 L. Ed. 532, 12 S. Ct. 720; *Toltec Ranch Co.* v. *Cook* (1903), 191 U. S. 532, 48 L. Ed. 291, 24 S. Ct. 166; *Davis* v.

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95 Utah 408, 79 Pac. (2) 999; *Eingartner* v. *Illinois Steel Co.*, (1899) 103 Wis. 373, 79 N.W. 433. See, also, *Dunbar* v. *Boston & P. R. Co.*, (1902) 181 Mass. 383, 63 N.E. 916; and *Hopkins* v. *Lincoln Trust Co.*, (1922) 135 N. Y. 213, 135 N.E. 267.

[5] *Orman* v. *Van Arsdell*, (1904) 12 N. Mex. 344, 78 Pac. 48; *Gilbert* v. *Selleck*, (1919) 93 Conn. 412, 106 Atl. 439; and *Herr* v. *Schwager*, (1927) 145 Wash. 101, 258 Pac. 1039.

[6] Such as *Robinson* v. *Robins Dry Dock & Repair Co.* (1924) 238 N. Y. 271, 144 N.E. 579, and *Jackson Hill Coal & Coke Co.* v. *Board of Commissioners*, (1914) 181 Ind. 335, 104 N. E. 497.

*Mills, supra; Northern Pac. Ry. Co.* v. *Ely* (1905), 197 U. S. 1, 49 L. Ed. 629, 25 S. Ct. 302; *Stewart* v. *Keyes* (1935), 295 U. S. 403, 79 L. Ed. 1507, 55 S. Ct. 807. In none of these cases was it indicated that the rule would be otherwise as to a barred statutory cause of action not involving title. Rather, in *Davis* v. *Mills, supra*, this Court questioned the soundness of the basic distinction, such as was made in the *Campbell* case, between limitation provisions which affect rights and those which affect remedy only, Mr. Justice Holmes saying (194 U. S. 451, at 456) that, "It is quite incredible that such an unsubstantial distinction should find a place in constitutional law".

The federal courts have followed the *Campbell* case only as to special statutes enacted in favor of the United States to revive outlawed tax claims. See, for example, *Pittsburgh Can Co.* v. *United States*, (1940—C. C. A. 3rd Cir.) 113 Fed. (2d) 821; which, like the others, is based primarily on *Graham* v. *Goodsell*, (1930) 282 U. S. 409, 75 L. Ed. 415, 51 S. Ct. 186. In the latter case (282 U. S. at 429), it was said that a distinction is made between the validity of a "curative statute aptly designed to remedy mistakes and defects in the administration of the government" and "a bare attempt of the legislature retroactively to create liabilities for transactions which, fully consummated in the past, are deemed to leave no ground for legislative intervention". See note in *133 A. L. R. 384, at 388*.

The 1941 law, as here construed and applied, deprives appellant of its property without due process of law of the Fourteenth Amendment to the Constitution of the United States. The holding of *Campbell* v. *Holt*, if applicable at all, should be over-ruled.

3. *The state court decision, in holding that the 1941 law, as here construed and applied, does not deny appellant the equal protection of the laws within the Fourteenth Amendment, presents a federal question of substance.*

The state court expressly found as follows: (See Appendix I)

> "The legislature acted promptly after our first opinion was filed. The inference is plain that it was dissatisfied with the law as laid down in that opinion and regarded it as unjust to the numerous plaintiffs who had bought this stock and had cases pending or had causes of action which would not be outlawed if the time subsequent to withdrawal from the state should be regarded as tolling the statute, as had been held in the federal court. City Co. of New York v. Stern (8 Cir.) 110 F. (2d) 601.
>
> "That it had all the cases similar to that at bar in mind can hardly be questioned, since in the general tenor of the section every aspect of them was covered. It was well known that a multitude of sales of this and other unregistered stock had been made in this state shortly before the 1929 crash. The evidence in this case shows about 500 sales of Chase units in Minnesota by this defendant in 1929. The legislature must have known that the great bulk of the violations of the statute had occurred prior to the crash and that few, if any, had occurred afterwards. As heretofore stated, defendant effected its withdrawal from the state in 1931. In the National City case (Pomeroy v. National City Co. 209 Minn. 155 N. W. 313), the withdrawal was effected in 1934. If the clause in the proviso relating to causes arising more than five years previously were to be interpreted as defendant contends, it would apply to few, if any, cases."

This Court is bound by this construction and application of the statute, "and the case must be considered as though the statute had, in specific terms," so provided,

and "as though such meaning had been specifically expressed therein." *Cudahy Packing Co.* v. *Parramore* (1923) 263 U. S. 418; 68 L. Ed. 366, 44 S. Ct. 153; *Nights of Pythias* v. *Meyer*, (1924) 265 U. S. 30, 68 L. Ed. 885, 44 S. Ct. 432; *Hartford Accident & Indemnity Co.* v. *Nelson Mfg. Co.*, (1934) 291 U. S. 352, 78 L. Ed. 840, 54 S. Ct. 392.

The sole question here is, not whether the statute may have been given another construction and application, but whether the statute, as here construed and applied, is valid: *Concordia Fire Ins. Co.* v. *Illinois*, (1924) 292 U. S. 535, 78 L. Ed. 1411, 54 S. Ct. 830; *Prince* v. *Commonwealth*, (1944) — U. S. —, 88 L. Ed. 403, — S. Ct. —.

As the proviso of the law has been so construed and applied, the legislature in effect enacted a special statute which was designed and intended to reopen for a period of one year after July 1, 1941, all claims against appellant and National City Company, *only*, and as to "this stock" *only*, and to leave the bar of the limitations statute unchanged as to all other corporations, whatsoever their kind or nature.

It is a settled rule of this court that the equal protection clause of the Fourteenth Amendment requires that the classification of persons or corporations for legislative purposes "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Southern Railway Co.* v. *Greene* (1910) 216 U. S. 400, 54 L. Ed. 536, 30 S. Ct. 287; *Royster Guano Co.* v. *Virginia* (1920) 253 U. S. 412, 64 L. Ed. 989, 40 S. Ct. 560; *Louisville Gas and Electric Co.* v. *Coleman*, (1928) 277 U. S. 32, 72 L. Ed. 770, 48 S. Ct. 423.

The construction and application of the 1941 law given by the state court violates these fundamental standards. It is arbitrary; it rests upon no fair or reasonable basis whereby appellant and National City Company might be

distinguished from hundreds of other securities houses throughout the country who had sold securities in Minnesota during the decades "more than five years" before July 1, 1941, the effective date of the law. Nor could there be any logical basis for legislation enacted for the specific purpose of restoring to purchasers of two stocks in this state rights of action which were not restored to purchasers of thousands of other stocks in this state during those same decades "more than five years" prior to July 1, 1941.

Nor can the law be sustained as a proper classification of corporations foreign to the state of Minnesota, since that distinction has no reasonable basis with relation to the object of the legislation and there is no reasonable presumption that equality would result. *Air-Way Electric Appliance Corp.* v. *Day*, (1924) 266 U. S. 71, 69 L. Ed. 169, 45 S. Ct. 12; *Power Mfg. Co.* v. *Saunders*, (1926) 274 U. S. 490, 71 L. Ed. 1165, 47 S. Ct. 678. The discrimination is entirely arbitrary, no matter what basis is assumed. *Smith* v. *Cahoon*, (1931) 283 U. S. 553, 75 L. Ed. 1264, 51 S. Ct. 582; *Borden's Farm Products Co.* v. *Baldwin*, (1934) 293 U. S. 194, 79 L. Ed. 281, 55 S. Ct. 187.

The 1941 law, as here construed and applied, denies appellant the equal protection of the laws.

*4. The state court decision, in finding the legislative intent (above discussed) without allowing appellant the opportunity to a trial on this vital issue or to know the factual basis for such finding, and in holding that such procedure did not deny appellant the due process of law guaranteed by the Fourteenth Amendment, presents a federal question of substance.*[7]

In construing the 1941 law, the Minnesota Court found that it was the purpose and intent of the legislature to

[7] This error is properly includable on an appeal. See last paragraph of Section V of this Jurisdictional Statement, at p. 12, above.

revive actions which the court previously held barred in this and the *Pomeroy* cases by decisions rendered in January, 1941. The relevant portion of its opinion (quoted in the first paragraph of Point 3, p. 20, above) clearly shows that the state court went beyond the words of the statute itself and relied on purported factual circumstances.

The question of legislative intent in this case thereby ceased to be a pure question of law based alone on the words of the statute as it is in some cases, rather it became, also, a question of fact concerning which courts take evidence as upon any other question of fact. See, Henry Wolf Bikle, "Questions of Fact Affecting Constitutionality," 38 Harv. L. Rev. 6; 1 *Wigmore on Evidence* (3d. ed.) Sec. 4 (1) pp. 145-46; 9 *Wigmore on Evidence* (3rd ed.) Sec. 2555, pp. 521-22; *Nashville, Chattanooga & St. Louis Ry. v. Walters*, (1934) 294 U. S. 405, 79 L. Ed. 949, 55 S. Ct. 486.

There is no proof in the record here of the intent of the legislature to revive barred claims against appellant and National City Company, except the very incidental fact that appellant had sold about 500 Chase units in Minnesota prior to 1929. Furthermore, at no time in this case was appellant afforded an opportunity to submit any proof whatsoever, relating to the question of legislative intent, because: (a) the one and only trial of the case occurred in May 1939, almost two years prior to the enactment of the 1941 law; (b) the trial court in June, 1942, without taking any new evidence found that the 1941 law applied to the case but made no express finding on the question of legislative intent (see Section IV, subsection 3, of this Jurisdictional Statement, at p. 6, above); (c) appellant's motion in September, 1942, for an amended findings or a new trial on the ground, among others, that the finding as to the application of the 1941 law was not supported by the evidence, was denied in November, 1942.

which ruling was duly assigned as error on the appeal to the state supreme court.

Not until the Supreme Court opinion did there appear in this case any specific findings of legislative intent. At its first opportunity, appellant on petition for rehearing challenged such findings, claiming the unconstitutional denial of a fair trial on that issue. It therein made an offer of proof, and requested a remand of the case to the trial court for trial on the issue of legislative intent, or a reference to a referee for taking evidence on the issue.[8] The State Supreme Court denied all of these requests, in denying the entire petition.

The findings of fact on this issue were drawn, almost entirely, from sources outside the law itself and presumably were predicated upon the theory of judicial notice. While it is true that courts, in determining legislative intent, may take judicial notice of the circumstances surrounding the passage of a statute, it is clear that the sources of findings on such intent (be they the deliberations of legislative committees, statements of legislative sponsors, and debates) should be specifically cited. See *Helvering* v. *Griffiths*, (1943) 318 U. S. 371, 87 L. Ed. 843, 63 S. Ct. 636; *United States* v. *Wrightwood Dairy Co.*, (1942) 315 U. S. 110, 86 L. Ed. 726, 62 S. Ct. 523; *United States* v. *Dickerson*, (1940) 310 U. S. 554, 84 L. Ed. 1356, 60 S. Ct. 1034, and see, also, *Barlau* v. *Minneapolis Moline Power Co.*, (1943)

[8] In its Petition for Rehearing, a part of this appeal record, appellant made an offer of proof (Point II of Petition) based on the affidavit of the official sponsor of the 1941 statute, i. e. the Commissioner of Securities of the Department of Commerce, and two members of the judiciary committee of the House of Representatives where the bill was considered and discussed. Appellant also offered the official Journals of the Minnesota House of Representatives and Senate, together with the committee reports. All of these affidavits and legislative records show that the legislature at no time discussed or considered that the 1941 statute was intended by anyone to revive the actions against the appellant and the National City Company which Minnesota Supreme Court held barred in January, 1941.

214 Minn. 564, 9 N. W. (2d) 6. Furthermore, the resort to judicial notice does not justify a court in denying an opponent the right to a trial wherein he may show contradictory facts and circumstances—to the end that the court's conclusion on the issue will be based on all available evidence and not alone on conjecture and surmise.

The determination of the matter of legislative intent by the state supreme court in this case, is contrary to the settled decisions of this court which guarantee a fair trial to any litigant, even as to issues properly the subject of judicial notice.

Thus, this Court, in *Ohio Bell Telephone Co.* v. *Public Utilities Commission*, (1937) 301 U. S. 292, 81 L. Ed. 1093, 57 S. Ct. 724, held that proper application of the principle of judicial notice cannot deprive the opponent of two fundamental rights: (a) the right to know the particular or evidential facts of which the court took judicial notice, and (b) the right to dispute by evidence the matter judicially noticed if he believes it is disputable. If either of these rights is not given, there is a denial of a "fair hearing essential to due process". This rule had been recognized previously in 5 *Wigmore on Evidence* (2d Ed.) Sec. 2567, p. 570. It has been re-affirmed in 9 *Wigmore on Evidence* (3rd Ed.) sec. 2567, p. 535.

Other expressions of this Court are to the same effect. In *Borden's Farm Products Co.* v. *Baldwin*, (1934) 293 U. S. 194, 79 L. Ed. 281, 55 S. Ct. 187, this Court observed that the "sphere of judicial notice" has definite limitations and that the constitutionality of legislative action should not be determined without the taking and considering of all available evidence on the question. In *Brinkerhoff-Faris Trust & Savings Co.* v. *Hill*, (1930) 281 U. S. 673, 74 L. Ed. 1107, 50 S. Ct. 451, and *Nashville, Chattanooga & St. Louis Ry.* v. *Walters*, *supra*, it was held that

the due process clause requires a state court (a) to afford a party the opportunity to present its case and to be heard in its support, and (b) to consider all of such evidence, before deciding the validity of a state law.

Here, such rights and due process were denied appellant. The "facts" noticed (excepting the mere fact of 500 sales of such stock in Minnesota prior to 1929) were and still are unknown to appellant. They are squarly contrary to all facts bearing on the question of legislative intent which appellant has been able to discover. At no time has appellant had the opportunity to examine the sources, if any, seemingly relied upon by the state court. At no time has appellant had the opportunity to submit the readily available and competent proof which is strongly to the contrary of the assumptions made by that court.

The state court's summary disposition of the issue without trial is wholly without legal precedent and is devoid of the most elementary principles of justice. A substantial right guaranteed by the due process clause has been violated.

## VII.

### Statement Respecting Opinions of State Supreme Court.

The opinion of the Supreme Court of the State of Minnesota, upon which was entered the judgment from which this appeal is taken, is reproduced as Appendix I, p. 50. It is reported in 13 N. W. (2) 1, but is not yet published in the official Minnesota reports. The petition for rehearing was denied by an order, dated February 23, 1944, without opinion. The order is reproduced as Appendix J, p. 59.

The opinions of the Supreme Court of the State of Minnesota, which were rendered on January 10, 1941, in the same case and in the related case of *Pomeroy* v. *Na-*

*tional City Company* and wherein it was held that appellee's cause of action for violation of the state securities law was barred, are reproduced as Appendixes B and C and are attached to this jurisdictional statement. They are reported as follows: *Donaldson* v. *Chase Securities Corporation*, 209 Minn. 165, 296 N. W. 518; and *Pomeroy* v. *National City Co.*, 209 Minn. 155, 296 N. W. 513.

Wherefore, appellant respectfully submits this statement and prays the order of this Court allowing this appeal for review of the judgment of the Supreme Court of the State of Minnesota, entered in the above entitled cause on February 23, 1944.

Dated: April 21, 1944.

Respectfully submitted,

CHASE SECURITIES CORPORATION, NOW KNOWN AS AMEREX HOLDING CORPORATION,

*Appellant.*

By F. H. STINCHFIELD,
S. S. JENNINGS, JR.,
*Counsel for Appellant.*

JOHN M. PALMER,
FLOYD E. NELSON,
*Of Counsel.*

## APPENDIX A.

The limitations statute which the Minnesota Supreme Court had previously held applicable to actions for alleged violation of the registration provisions of the Blue Sky Law is Subdivision 2 of *Mason's Minnesota Statutes*, 1927, Section 9191 (now known as Minnesota Statutes, 1941, section 541.05):

> "9191. *Various cases, six years*—The following actions shall be commenced within six years:
>
> "1. Upon a contract or other obligation, express or implied, as to which no other limitation is expressly prescribed.
>
> "2. Upon a liability created by statute, other than those arising upon a penalty or forfeiture. . . ."

## APPENDIX B.

January 10, 1941

No. 32,669

DONALD L. POMEROY,

v.

NATIONAL CITY COMPANY (also known as City Company of New York, Inc.).[9]

Limitation of action—statutes of limitation—application to foreign corporations:

1. General statutes of limitation, although making no mention of foreign corporations, apply thereto notwithstanding.

Statute—construction—purpose of statute.

2. If a case is fairly within the purpose of a statute, it must go to decision thereunder, unless excluded by necessary implication or explicit terms.

[9] Reported in 296 N. W. 513.

Statute—construction—avoidance of capricious distinctions and unjust results.

3. Capricious distinctions are not to be imputed to the legislature. Unjust and indefensible results of a statute are to be avoided by construction, if possible.

Corporation—foreign corporation—"presence" in state for service of process—qualified departure—statute of limitations.

4. A foreign corporation which has ceased doing business in the state and withdrawn therefrom except that, in obedience to statute, it has left here a continuing agent for personal service of process in actions arising from its Minnesota business, is, in contemplation and as result of law, continuously present here for service upon it in such actions. Hence the running of the statute of limitations is not tolled by its qualified departure from the state.

Action in the district court for Hennepin county to rescind a sale of stock to plaintiff by defendant, a foreign corporation, on the ground of violation of the blue sky law, and to recover the purchase price thereof. From an order, Luther W. Youngdahl, Judge, sustaining a demurrer to defendant's defense of the statute of limitations, the latter appealed. Reversed.

*Doherty, Rumble, Butler, Sullivan & Mitchell*, for appellant.

*James D. Bain* and *Norman D. Arvesen*, for respondent.

*O'Brien, Horn & Stringer* and *Leonard, Street & Deinard, amici curiae*, filed separate briefs in support of the contention of respondent.

STONE, *Justice*.

Defendant appeals from an order sustaining a demurrer to its pleas of the statute of limitations.

From April, 1917, to August, 1934, defendant was in this state as a foreign corporation, qualified under applicable statutes. In August, 1934, defendant ceased to transact

business in Minnesota and formally withdrew therefrom, except that, in compliance with the statutes (Mason Minn. St. 1927, §§ 3996-11 and 7494) it had irrevocably appointed both commissioner of securities and secretary of state its agents for service of process in actions arising from its Minnesota business.

It is enough of the facts that plaintiff must be considered to have sued "upon a liability created by statute", arising from defendant's business in Minnesota. Under 2 Mason Minn. St. 1927, § 9191, the action is barred, not having been commenced within six years from the time the cause of action accrued, in April, 1929 (when defendant was doing business here), unless saved by the tolling provisions of 2 Mason Minn. St. 1927, § 9200, which declare that:

"If, when a cause of action accrues against a person, he is out of the state, an action may be commenced within the times herein limited after his return to the state; and if, after a cause of action accrues, he departs from and resides out of the state, the time of his absence is not part of the time limited for the commencement of the action".

In respect to the appointment of the commissioner of securities, the statute declares that service upon him "shall be as valid and binding as if due and personal service had been made." Defendant's appointment of the secretary of state was made under 2 Mason Minn. St. 1927, § 7494 (since superseded by 3 Mason Minn. St. 1940 Supp. §§ 7495-13, 7495-16). "Such appointment," it is declared, "shall continue in force as long as any cause of action, right, or claim against said corporation survives in this state, and service upon such agent shall be deemed personal service upon the foreign corporation so appointing him."

If, within the meaning of the tolling statute, defendant departed therefrom in 1934 and has since resided out of the state, the statute of limitations was tolled and the demurrer properly sustained. This presents the one question for decision.

1. Such limitation statutes, although making no mention of foreign corporations, apply thereto notwithstanding,

*City of St. Paul* v. *C. M. & St. P. Ry. Co.* 45 Minn. 387, 48 N. W. 17; annotation, 59 A. L. R. 1336. Statutes abound with use of the word "person" to include corporations. See Index, 2 Mason Minn. St. 1927, "Person". The legislature has enjoined that "unless another intention clearly appears . . . the word 'person' (in statutes) may extend and be applied to bodies politic and corporate." 2 Mason Minn. St. 1927, § 10033.

2. It is idle to suggest that in the enactment long ago of our general statute of limitations the legislature anticipated actions against foreign corporations withdrawn from the state, leaving behind a continuing agency for service of process. So we have a problem thus dealt with in Gray, The Nature and Sources of the Law (2 ed.) p. 173:

"The fact is that the difficulties of so-called interpretation arise when the Legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the judges have to do is, not to determine what the Legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present."

We cannot agree that, in the process of decision, judges "guess" concerning such a problem or any other. Nothing is more essential in that process than for the judge to watch constantly the line between reasonable inference or logical deduction on the one hand and guess or conjecture on the other. The former constitutes the only sound material for decision.

We would be guilty of judicial legislation if we did not apply § 9200 to all cases not excluded by its terms and fairly within both its reason and purpose.

Statutes normally have their policy, their purpose, their reason for being. Legislators, no more than judges, have the faculty of comprehensive and unerring prevision. But, unlike judges, their function is to make rules for future conduct. The application of such rules to all cases not excluded by their terms and within their purpose and reason for being is a primary duty of judges.

That duty is not to be shirked simply because it is clear that the legislators did not foresee all cases to which their rule might apply. If a case is fairly within the purpose of a statute, it must go to decision thereunder, unless excluded by necessary implication or explicit terms, as by stated exception.

3. As to § 9200, this is a case unforseen by its framers. But its purpose is not thereby to be defeated as to any case fairly within it. The object is repose, to be achieved by arbitrary limitation of time barring resurrection of stale claims. To the extent that judicial construction sets up a category of cases against which that bar cannot run, notwithstanding the complete amenability of the debtor to personal service, there is created an exception from the rule of the statute which by so much annuls its policy and defeats its purpose.

Such capricious disfinctions are not to be imputed to the legislature. Unjust and indefensible results of a statute are to be avoided by construction, if possible. 6 Dunnell, Minn. Dig. (2 ed. & Supps.) § 8943.

4. Generally, a corporation is present wherever it is doing business. While its domicile (particularly in respect to federal jurisdiction) is and always remains in its "home state," it may also be continuously present in others because of the presence and activities of its agents therein. For all purposes except the exercise of local jurisdiction, a corporation may be absent from the state of its incorporation in the sense that it has no business there, no office and no agent except one for service of process.

Such presence or any presence of a corporation is not fictional. It is the result of law. It exists only in contemplation of law. It is nevertheless real and a fact to be so regarded for all purposes of law. In re Trust Under Will of Clarke, 204 Minn. 574, 284 N. W. 876.

The domestic corporation doing no business in Minnesota, having no office here save one for service of process, is continuously present for purpose of being served. That being so, and for no other reason, the statute of limitations continues to run in its favor. Why not also as to a foreign cor-

poration which has ceased business here, closing all its offices, dismissing all its agents, and withdrawing except for a statutory agent required by law for personal service?

That status is real and adequate residual presence for purposes of suit. The utmost of disagreement must admit that it is at least a complete and satisfactory substitute for the presence required by the tolling statute.

A corporation is not absent from a jurisdiction where *personal* service upon it is continuously inescapable. Reason cannot conclude otherwise, unless it fails to distinguish between the qualities which make up the personality of a natural person and those which characterize that of a corporation. There is a quality of ubiquity inherent in corporate personality impossible to that of a natural person. It enables a corporation to be continuously present simultaneously in many jurisdictions.

A corporation is present anywhere only by agents. Such presence is a result attached by law to stated corporate action. It is nevertheless fact. Being the creature of law, the law may limit and qualify it. So it may be for the one purpose of serving process. For such purpose, the presence is real and sufficient. While it continues and for accomplishment of the law's purpose, the corporation cannot be considered absent.

The declaration of § 7494 that the service "shall be deemed personal" is equivalent to saying that for service of process the corporation remains personally present. Meaning and effect would not be more plain had the statute declared that the departing corporation, leaving here its authorized agent, was to be considered present for actions arising from its Minnesota business. Being present for that purpose, it is presently irrelevant that it is absent for all others.

The requirement of § 7494 of the appointment of the agent for service of process reaches every cause of action which "survives in this state." What must the cause of action survive in order to be within the statute?

The idea so expressed or implied must be given effect if possible. The survival of causes of action is a subject long covered by another statute, 2 Mason Minn. St. 1927, § 9656. Without more, and even though § 7494 were silent on the

question, a foreign corporation is liable in all actions against it which survive under § 9656. Hence, if the reference in § 7494 to claims which survive "in this state" has no other effect than that of § 9656, the clause is meaningless.

Inasmuch as the foreign corporation is liable in any event on a cause of action continuing under the survivorship statute (§ 9656) and not barred by limitation, the thought suggests itself that the reference in § 7494 to a cause of action which "survives" has another or additional meaning. That meaning seems to us simply that the corporation will be liable upon all causes of action arising out of its Minnesota business which, *at the time suit is commenced*, continue in spite of or survive *everything* which could deprive them of life or enforceability. A cause of action barred by the statute of limitations does not so survive. Only by holding that the clause "survives in this state" was intended to reach every claim upon which an action can be maintained, and so exclude those barred by limitation, can we give it any meaning. Even so, it does not have much, at most, it appears to have been used in abundant caution, to make sure that the agency would continue as long as any claim arising from the principal's Minnesota business continued enforceable.

We have considered all authorities cited, with additions. At the outset, we have the long settled policy of this court not to deny statutes of limitation their intended result of repose. Their purpose "in allowing specified times for commencing actions, and in making exceptions to the running of such times, is a practical one. It is to give to plaintiff what the legislature deemed a reasonable opportunity to seek a remedy. No mere theoretical absence from the state, not preventing in any way a full and complete remedy, for the times specified, can have been intended" by the tolling statute. City of St. Paul v. C. M. & St. P. Ry. Co., 45 Minn. 387, 399, 48 N. W. 17, 21.

That thought was repeated and made the basis of decision in Luce v. Clarke, 49 Minn. 356, 51 N. W. 1162 (followed in Pattridge v. Palmer, 201 Minn. 387, 389, 277 N. W. 18), where it was said, at page 360: "All statutes of limitation, in prescribing the periods, have reference for the beginning of such periods to the time when the opportunity to commence the action arises." That idea runs through much

of the decision law (e. g., Penley v. Waterhouse, 1 Iowa, 498) relating to the statute of limitations and the tolling thereof. It was applied to a foreign corporation in decisive fashion in Walker v. L. E. Meyers Const. Co., 175 Okl. 548, 549, 53 P. (2d) 547. The court said:

"For a foreign corporation, then, to be a non-resident of the state, or out of the state, in the sense of the statute, it must be out of the state in such sense as to render it impracticable at all times to obtain service of process upon it."

In accord is Title G. & S. Co. v. McAllister, 130 Ohio St. 537, 546, 200 N. E. 831, 835, where it was considered "a fair proposition" that "the test of the running of the statute should be the liability of the party invoking its bar to the service of process during the whole of the period prescribed." For this case, we repeat, under our statute the presence of the corporation for service of process is a fact. The law makes it so by saying that service upon the local agent shall be personal service. If that be not so, then at least there is a complete and satisfactory statutory substitute for the presence which respondent insist is necessary in order that the statute be not tolled. That was precisely the unanimous thought of this court expressed by Mr. Chief Justice Brown, in American Loan & Inv. Co. v. Borass, 156 Minn. 431, 434; 195 N. W. 271, 272. There, the plaintiff, a foreign corporation, had done all that it could to withdraw from Minnesota. However, under our statutes it was still amenable to suit here and was sued on a cause of action arising out of its Minnesota business. Consequently, and notwithstanding the otherwise efficacious steps taken to withdraw, "the corporation, as to all unadjusted transactions theretofore entered into with citizens of the state, remained in this state, in contemplation of law, subject to the jurisdiction of its courts by the service of process."

Our decision is opposed to that in City Co. of New York, Inc. v. Stern (8 Cir.) 110 F. (2d) 601. No one feels greater deference to, or has higher regard for, a decision of the Eighth Circuit Court of Appeals than the bench and bar of Minnesota. However, in a matter of state law, we would be shirking the responsibility which is ours if, where we differed with that eminent tribunal, we did not decide accordingly, with full statement of our reasons for doing so.

Aside from the decisions of this court soon to be considered, the decision in the *Stern* case was put upon the proposition, the gist of which is thus stated (110 F. (2d) 604):

"Nor can the defendant be said to reside and be present in Minnesota merely by reason of the fact that it remains subject to the jurisdiction of her courts in certain classes of actions. In this instance the right of the state to acquire jurisdiction in personam over the departed corporation in a limited class of actions does not rest on the basis of a fiction of continued presence in Minnesota but upon the defendant's express consent to accept service through designated attorneys."

We cannot agree that, under our statutes concerning departed foreign corporations, the local acquisition of jurisdiction *in personam* over them rests upon a mere "fiction" of continued presence, or that it arises, without more, from the consent of the defendant "to accept service through designated attorneys." The consent is present but only as a process. The result is a distinct status of presence in Minnesota. That the agent for service has no authority otherwise to represent his principal is unimportant. He has all the authority needed for personal service. Hence his corporate principal is present with him for personal service.

The decision in the *Stern* case, 110 F. (2d) 601, was put in part upon Venable v. Paulding, 19 Minn. 422 (488). The thought was that by that decision this court had adopted a literal application of the tolling statute. The entire discussion in the *Venable* case related to a defendant who was a natural person. He had been long absent from the state. A verdict had been directed in his favor. There was reversal solely because it was considered that there was a jury question whether, during all his absence, his residence continued in Minnesota so that there could have been the substituted personal service authorized by our statute (2 Mason Minn. St. 1927, § 9228), of which more later.

In the *Stern* case (110 F. (2d) 606), Rogers v. Benton, 39 Minn. 39, 42, 38 N. W. 765, 767, 12 A.S.R. 613, was considered "squarely in point on the construction of the tolling statute." There the defendant's absence "was permanent

in its nature," resulting from "a permanent change of residence." Concerning service upon him, the opinion states "the fact that Conant (assignee of the mortgage) might, notwithstanding the non-residence of the mortgagor (Benton), have resorted to substituted service of the summons, would not take the case out of the statutory exception (of departure from and residence out of the state). The right to foreclose by action, therefore, still existed when the Conants entered into posession."

At this point we should bring in a long-existing fact of our procedure. If the defendant is a natural person "residing or being within the state," service of summons may be made by delivering a copy "to the defendant personally." § 9228. But the service shall be deemed personal "if the copy . . . be left at the house of the usual abode of the person to be served, with some person of suitable age and discretion then residing therein."

Beginning possibly after 1888, when Rogers v. Benton, 39 Minn. 39, 38 N. W. 765, was decided, leaving a copy of the summons with a person of suitable age and discretion at a defendant's usual abode, has been considered, as matter of terminology, "substituted service." In Rogers v. Benton, the phrase could not have had that meaning because there what we now characterize as "substituted service" was impossible. He had no residence, that is, no place of usual abode, in this state, because, as the opinion stated, the defendant had "resided in Connecticut" during the whole of the determinative period. So, when the court, in Rogers v. Benton, 39 Minn. 42, 38 N. W. 767, mentioned "substituted service of the summons" upon Benton, the reference was exclusively to publication of the summons. We no longer call that substituted service. It is constructive, not personal, service; and irrelevant when considering acquisition of jurisdiction *in personam*. It seems to us that Rogers v. Benton was inadvertently misconstrued in the *Stern* case, 110 F. (2d) 601.

In that case, there was a dissent by Judge Woodrough (101 F. (2d) 606). He considered that, because of continuing amenability of the defendant to personal service in this state, the statute had not been tolled. With that view we agree. Only by blinding ourselves to the stubborn

and decisive fact that defendant has been present actually and continuously for purposes of personal service of process; only by saying that, notwithstanding, it has been wholly absent from the state, could we do otherwise than hold as we do.

The cases deciding the similar issue which has arisen under statutes for service of process upon nonresident owners of automobiles have not been ignored. Of these cases, Bode v. Flynn, 213 Wis. 509, 252 N. W. 284, 94 A. L. R. 480, and Maguire v. Yellow Taxicab Corp. 253 App. Div. 249, 1 N. Y. S. (2d) 749, affirmed, 278 N. Y. 576, 16 N. E. (2d) 110, are in disagreement with the thesis of this decision. In accord with it are Coombs v. Darling, 116 Conn. 643, 166 A. 70; Nelson v. Richardson, 295 Ill. App. 504, 15 N. E. (2d) 47; Arrowood v. McMinn County, 173 Tenn. 562, 121 S. W. (2d) 566, 119 A. L. R. 855.

The order under review is reversed.

Holt, *Justice* (dissenting):

I dissent. In my judgment the majority opinion in City Co. of New York, Inc. v. Stern (8 Cir.) 110 F. (2d) 601, gives more satisfactory reasons for holding that the statute of limitation is tolled when a foreign corporation, pursuant to 2 Mason Minn. St. 1927, § 7494, withdraws from this state, than does the erudite opinion of Mr. Justice Stone that such removal does not toll the statute. There is no need to add to what is said by the prevailing opinion in the *Stern* case.

Gallagher, *Chief Justice* (dissenting):

I agree with Mr. Justice Holt.

Peterson, *Justice* (dissenting):

I agree with Mr. Justice Holt.

## APPENDIX C.

RUTH CHASE DONALDSON

*v.*

CHASE SECURITIES CORPORATION.

(Now Amerex Holding Corporation).[10]

January 10, 1941.

Nos. 32,572, 32,625.

Case followed.

Action in the district court for Hennepin county to rescind a sale of stock to plaintiff by defendant, a foreign corporation, on the ground of violation of the blue sky law, and to recover the purchase price thereof. After findings for plaintiff, Winfield W. Bardwell, Judge, defendant appealed from the judgment. Reversed, following Pomeroy v. National City Co., 209 Minn. 155, 296 N. W. 513.

*Stinchfield, Mackall, Crounse & Moore* and *John M. Palmer*, for appellant.

*Streissguth & Gislason* and *Leonard, Street & Deinard*, for respondent.

STONE, *Justice*:

Our decision in a companion case, Pomeroy v. National City Co., 209 Minn. 155, 296 N. W. 513, is decisive of the only question presented by this appeal and requires reversal of the judgment under review.

This record indicates the presence of issues other than that of the tolling of the statute of limitations. If in respect to such issues there are further proceedings below, this decision is without prejudice to them or to the result.

Reversed.

GALLAGHER, *Chief Justice*; HOLT, *Justice*, and PETERSON, *Justice* (dissenting):

We dissent.

[10] 296 N. W. 518.

## APPENDIX D.

### MANDATE.

STATE OF MINNESOTA,
*Supreme Court, ss:*

THE STATE OF MINNESOTA,

*To the Honorable Judge and Officers of the District Court Within and for the County of Hennepin Greeting:*

Whereas, Lately in your Court, in action therein pending, entitled Ruth Chase Donaldson, Plaintiff, and Chase Securities Corporation, a corporation, now known as Amerex Holding Corporation, Defendant, a certain judgment was entered therein June 18, 1940 from which action of your Court an appeal thereafter was taken to this Court;

And Whereas, The said cause came on to be heard before our Supreme Court, and was argued in counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the order of the Court below herein appealed from, be, and the same hereby is, in all things reversed and that judgment be entered accordingly. A copy of the entry of judgment thereupon in this Court is herewith transmitted and made part of this remittitur.

Now, Therefore, This Mandate is to you directed and certified, to inform you of these proceedings had in our Supreme Court, in said hereinbefore mentioned cause, and the same is hereby and herewith Remanded to your Court for such other or further record and proceedings therein as may be by law necessary, just and proper, under and by virtue of the said order herein made.

Witness, The Honorable Henry M. Gallagher, Chief Justice of the Supreme Court aforesaid, and the seal of said Court at St. Paul, this March 7, 1941.

[SEAL.]

GRACE KAERCHER DAVIS,
*Clerk of Supreme Court.*

By MAE SHERMAN,
*Deputy.*

STATE OF MINNESOTA, SUPREME COURT.

32572 and 32625.

RUTH CHASE DONALDSON, *Respondent.*

*vs.*

CHASE SECURITIES CORPORATION, a Corporation, Now Known as AMEREX HOLDING CORPORATION, *Appellant.*

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the orders and judgment of the Court below, herein appealed from, to-wit, of the District Court within and for the County of Hennepin be and the same hereby is in all things reversed.

And it is further determined and adjudged that appellant herein, do have and recover of respondent herein the sum and amount of Three Hundred Eighty-nine and 70/100 Dollars ($389.70) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed March 7, 1941.

BY THE COURT.

Attest:

GRACE KAERCHER DAVIS,
*Clerk.*

STATEMENT FOR JUDGMENT.

Statutory Costs, $25.00; Printer, $284.15; Clerk, $5.00; Acknowledgments, $——; Return, $10.00; Postage and Express, $——; Appeal Bond, $65.55; Transcript, $——; Total, $389.70.

Satisfaction of Judgment filed.

Therefore the above judgment is duly satisfied in full and discharged of record.

Attest:

——————,
*Clerk.*

By ——————,
*Deputy.*

STATE OF MINNESOTA,
*Supreme Court, ss:*

I, Grace Kaercher Davis, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul, Mar. 7, 1941.

GRACE KAERCHER DAVIS,
*Clerk.*

[SEAL.]

By MAE SHERMAN,
*Deputy.*

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## APPENDIX E.

Excerpts from appellee's supplemental motion, dated May 16, 1941, made in the trial court, after the passage of the 1941 law, asking that the findings of the trial court be amended to include an additional paragraph, as follows:

> "XXIX. Plaintiff's cause of action, based upon the illegal sale by defendant to her of said securities in violation of the provisions of the Blue Sky Law, was revived by virtue of the provisions of Laws of Minnesota, 1941, Chapter 547, Sec. 18 (Mason's Minnesota Statutes 1927, Secs. 3996-24 as amended), and the time for assertion of said cause of action was extended by the provisions of said statute to July 1, 1942, and said cause of action was asserted and commenced within the time limited by the statutes of the State of Minnesota for the commencement of such action."

This particular motion was made upon this ground:

> "That subsequent to the service of plaintiff's Notice of Motion dated April 9, 1941, the Legislature of the State of Minnesota enacted Laws of Minnesota 1941, Chapter 547, which revived plaintiff's cause of action based upon the illegal sale of securities to her, and that

plaintiff is thereby entitled to a finding of fact that plaintiff seasonably commenced her cause of action based on said illegality."

---

## APPENDIX F.

Excerpts from cross-motion, dated May 14, 1941, made by appellant in the trial court, directed to appellee's supplemental motion, and asking that the original findings of fact and conclusions of law be amended, as follows:

"17. By striking therefrom the conclusions of law as found by the court and by substituting in lieu thereof the following:

"a. The only cause of action established by the evidence is one based on a violation of the Blue Sky Law in the sale of unregistered stock. Said cause of action is upon a 'liability created by statute' within the meaning of Section 9191 subdivision 2, Mason's Minn. Stat., 1927, and, having accrued more than six years prior to the commencement of the action, it is barred. Said cause of action is not revived by Section 18, Chapter 547, Laws of Minn., 1941."

. . . . . .

"Said motion to amend the court's Findings of Fact, Conclusions of Law and Order for Judgment are based on the following grounds:

"1. The only cause of action established by the evidence is founded upon a violation of statute which, under the mandate of the Supreme Court of Minnesota in this case, was barred by the Statute of Limitations."

. . . . . .

"3. Section 18 of Chapter 547, Laws of Minnesota, 1941, does not apply to this case and does not revive the action barred under Section 9191, Mason's Minn. Stat., 1927."

## APPENDIX G.

Appellant, after the trial court's decision on June 24, 1942, made a motion, dated September 8, 1942, for amended findings of fact and conclusions of law, or for a new trial, as follows:

"a) To amend the court's findings and conclusions of law as to the 1941 law, by striking out the entire paragraph XXXII (See par. 22 of Motion to Amend); and also by striking out the conclusions of law and by substituting in lieu thereof the following (See par. 29 of Motion to Amend):

> "a. The only cause of action, if any, established by the evidence is one based on a violation of the Blue Sky Law in the sale of unregistered stock. Said cause of action is upon a 'liability created by statute,' within the meaning of Section 9191, subdivision 2, Mason's Minn. Stat. 1927, and, having accrued more than six years prior to the commencement of the action, it is barred. Said cause of action is not revived by Section 18, Chapter 543, Laws of Minn. 1941.'"

upon these grounds:

> "1. That there is no competent evidence of any evidence in the case to support the findings of fact and conclusions of law or portions thereof specified above, which defendant hereby moves to strike from the findings of fact and conclusions of law entered herein on June 27, 1942."
>
> "2. That each and every part of said findings of fact and conclusions of law, specified above, which defendant hereby moves to strike from the findings of fact and conclusions of law entered herein on June 27, 1942, is contrary to law."
>
> "3. That there is competent evidence in the case to support the amended findings of fact and conclusions of law above proposed by defendant; and that said proposed findings of fact and conclusions of law are in conformity with the applicable law."

"4. That the only cause of action, if any, established by the evidence, is founded upon a violation of statute which, under the mandate of the Supreme Court of Minnesota in this case, was barred by the statute of limitations."

"5. That the matter contained in the court's present findings of fact, conclusions of law and order for judgment, heretofore specifically referred to, which are inconsistent with and irrelevant to an action based on violation of statute, should be stricken."

"6. That Section 18 of Chapter 547, Laws of Minnesota 1941, does not apply to this case and does not revive the action barred under Section 9191, Mason's Minn. Stat. 1927."

. . . . . .

"12. That the Minnesota Blue Sky Law, if applied to said transaction between plaintiff and defendant, would deprive defendant of its property without due process of law, in violation of the provisions of Section 7 of Article 1 of the Constitution of the State of Minnesota, and Section 1 of the Fourteenth Amendment to the Constitution of the United States."

. . . . . .

"15. That plaintiff's cause of action, if any, accrued more than six years before the attempted commencement of this action and is barred by the statute of limitations."

(b) To grant a new trial as to the 1941 law (and other issues), upon these errors:

"2. That the findings of fact filed herein are not justified by the evidence."

"3. That the findings of fact filed herein are erroneous and contrary to law."

"4. That the conclusions of law filed herein are not sustained by the findings of fact."

"5. That the conclusions of law filed herein are contrary to law, and based on erroneous findings of fact." (R. 1184-85).

. . . . . .

"13. That the court erred in making finding of fact numbered XXXII (Third paragraph thereof), to the effect that 'insofar * * * as said provisions 'are applicable to plaintiff's cause of action,' the provisions of Laws of Minnesota, 1941, Chapter 547, Section 18, extended the time to July 1, 1942, within which plaintiff could have commenced this action and that this action was duly commenced 'within the time limited by the statutes of the state of Minnesota,' upon the following grounds:

(a) That it is not justified by competent evidence of any evidence.

(b) That it is erroneous and contrary to law.

(c) That if said finding constitutes a determination by the court that the plaintiff's cause of action, previously barred by the general statute of limitations (Section 9191 of Mason's Minnesota Statutes, 1927), was revived by said 1941 law, then said 1941 law is unconstitutional, null and void, in that said statute deprives defendant of its property without due process of law, in violation of the provisions of Section One of the Fourteenth Amendment to the Constitution of the United States and Section Seven of Article One of the Constitution of the State of Minnesota.

(d) That said finding is vague and indefinite and does not specifically and directly say that said 1941 law is applicable to plaintiff's alleged cause of action; that if said 1941 law is not applicable to the case, this finding is wholly irrelevant, immaterial and contrary to law; that the defendant is entitled to a square finding of fact or conclusion of law as to whether the court's decision is predicated upon this statute." (R. 1195-96).

And upon these general grounds:

"1. That there is no competent evidence of any evidence in the case to support the findings of fact and conclusions of law or portions thereof, specified above, and that the court erred in making them."

"2. That each and every part of said findings of fact and conclusions of law, specified above, is contrary to law and that the court erred in making them."

"3. That the only cause of action, if any, established by the evidence is founded upon a violation of statute which, under the mandate of the Supreme Court of Minnesota in this case, was barred by the statute of limitations."

. . . . . .

"5. That Section 18 of Chapter 547, Laws of Minnesota, 1941, does not apply to this case and does not revive the action barred under Section 9191, Mason's Minn. Stat., 1927."

. . . . . .

"14. That plaintiff's cause of action, if any, accrued more than six years before the attempted commencement of this action and is barred by the statute of limitations."

## APPENDIX H.

Appellant, on its second appeal to the Minnesota Supreme Court, assigned the following errors as to the 1941 statute (See Assignments of Error in Minnesota Supreme Court):

"4. That the trial court erred in denying defendant's alternative motions for amended findings of fact, conclusions of law and order for judgment or for a new trial".

. . . . . .

"31. That the trial court erred in making *Finding of Fact numbered XXXII*, as follows:"

* * * * * * *

"'In so far as the provisions of Laws of Minnesota, 1941, Chapter 547, Sec. 18 (Mason's Stat., 1927, Sec. 3996-24, as amended) are applicable to plaintiff's cause of action, or any of the separate grounds for relief asserted by plaintiff, the time for assertion thereof or commencement of an action thereon was extended by said statute to July 1, 1942, and plaintiff's action was duly commenced within the time limited by the statutes of the State of Minnesota' ".

"and in denying defendant's alternative motions to strike the whole of said finding and to substitute in lieu thereof the following:"

"'That the summons and complaint in this action were delivered to the Commissioner of Securities as defendant's agent for service of process on November 22, 1937; that said delivery and attempted service upon defendant was made more than six years after the sale of said Chase units' ".

"or for a new trial upon said error."

* * * * * * *

"42. The trial court erred in making conclusions of law numbered I * * * and in denying defendant's motion to strike the whole of said conclusions of law and to substitute the following in lieu thereof:

"'a. The only cause of action, if any, established by the evidence is one based on a violation of the Blue Sky Law in the sale of unregistered stock. Said cause of action is upon a 'liability created by statute' within the meaning of Section 9191, subdivision 2, Mason's Minn. Stat., 1927, and, having accrued more than six years prior to the commencement of the action, it is barred. Said cause of action is not revived by Section 18, Chapter 547, Laws of Minn., 1941."

## APPENDIX I.

HENNEPIN COUNTY

No. 146

33458

(Ruth Chase Donaldson), Frank A. Donaldson and Frank A. Donaldson, Jr., Executors of the Estate of Ruth Chase Donaldson, deceased, substituted as respondents, *Respondents*,

*vs.*

Chase Securities Corporation, now known as Amerex Holding Co., Appellant.

Endorsed: Filed December 31, 1943, Grace Kaercher Davis, Clerk Minnesota Supreme Court.

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*Syllabus*

Henry M. Gallagher, *C. J.*:

1. Where shares of the stock of a New York corporation organized for the purpose of dealing in securities were so inseparably combined and consolidated with the shares of a New York national bank that the shares of neither could be sold or transferred without a like number of the other, the corporate stock was required to be registered under Mason St. 1927, § 3996-4, before it could be lawfully sold in this state although the bank stock was immune from registration.

2. Unless barred by the statute of limitations, a purchaser of unregistered stock which by the terms of § 3996-4 is required to be registered may recover the purchase price thereof.

3. Under the provisions of Minn. St. 1941, § 80.26 (Mason St. 1941 Supp. § 3996-24), a cause of action, arising out of

a violation of Mason St. 1927, § 3996-4, may be brought within one year from the effective date of § 80.26, although more than six years had elapsed since the delivery of the unregistered stock at the time of the enactment of § 80.26.

4. The fact that more than six years had elapsed prior to the enactment of § 80.26 and that under the general statute of limitations then in force a cause of action arising out of the violation of § 3996-4 was barred did not prevent the legislature by § 80.26 from lifting the bar of the statute of limitations, because the general statute of limitations applied merely to the remedy and did not vest such a right in the defendant that the legislature could not lift the bar. A general statute of limitations does not operate as payment of a debt or as satisfaction of liability for tort.

5. The proviso of § 80.26 applies to cases already pending as well as to those not instituted at the time that § 80.26 was enacted.

Judgment affirmed.

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*Opinion*

HENRY M. GALLAGHER, *Chief Justice.*

This case comes here on appeal from a judgment for the plaintiffs as executors of the estate of Ruth Chase Donaldson, deceased. She originally brought the action but died after this appeal, and the executors were substituted in this court. She will hereinafter be referred to as the plaintiff. The action was brought in tort to recover as damages the purchase price of unregistered securities sold in Minnesota to plaintiff by defendant, a New York corporation, in August 1929, in alleged violation of the securities law of this state (Mason St. 1927, § 3996-4) which required their registration. It also sought recovery on the ground of deceit based on misrepresentation, but in view of our disposition of the case we need not consider that phase of the case.

On the trial below the court found in favor of plaintiff on the basis of a violation of the statute, holding as against

the defendant's plea of the statute of limitations that the statute had been tolled by defendant's withdrawal from the state on June 30, 1931. It therefore did not make findings on the deceit issue. On appeal, this court held that the general six-year statute had run against plaintiff because, notwithstanding the withdrawal of defendant from this state, service of summons could at all times have been made either on the secretary of state or the commissioner of securities as defendant's agents to receive service. The case then went back for findings on the deceit issue, which were in favor of plaintiff. *Pomeroy* v. *National City Co.*, 209 Minn. 155, 296 N. W. 513; *Donaldson* v. *Chase Securities Corp.*, 209 Minn. 165, 296 N. W. 513.

The securities sold to plaintiff were eight shares of the combined or consolidated stock of the Chase National Bank and of the defendant, which, by contract, could not be sold or disposed of separately. They are sometimes referred to as "Chase units." These shares had been combined in 1917 and were at one time listed on the New York Stock Exchange but in January 1928 were delisted so that stock of the defendant securities corporation was not exempted by the terms of our securities act from registration here. Shortly after the delisting, defendant opened an office in Minneapolis and commenced the sale of the combined stocks. The sale to plaintiff was made by a duly authorized agent of defendant. The defendant was licensed as a corporation to do business in this state and had irrevocably appointed the commissioner of securities as its agent to receive service. After the crash of 1929 it withdrew from the state, at the same time appointing the secretary of state its agent to receive service in any action arising out of transactions which took place in this state while it was licensed to do business here.

The opinions of this court were filed on January 10, 1941, while the legislature was in session. In April of that year, by L. 1941, c. 547, § 18, the legislature for the first time enacted a specific limitation upon actions based upon unlawful sales of securities, or deceit in connection therewith, and fixed six years from the date of delivery of the securities as the time within which action for violation of the

statute or deceit must be brought. This section of the statute reads as follows:

> "No action shall be maintained for relief upon a sale of securities made in violation of any of the provisions of this act, or upon a sale of securities made in violation of any of the provisions of a registration thereof under this act, or for failure to disclose that the sale thereof was made in violation of any of the provisions of this act or in violation of any of the provisions of a registration thereof under this act, or upon any representation with respect to the registration or nonregistration of the security claimed to be implied from any such sale, unless commenced within six years after the date on which said securities were delivered to the purchaser pursuant to such sale, provided that if, prior to the effective date of this section, more than five years shall have elapsed from the date of such delivery, then such action may be brought within a period of one year following such effective date."

It is the proviso which presents what we regard as the controlling question in this case. (1) Did the legislature intend by this proviso to lift the bar of the statute where the general six-year limitation had already run? (2) If it intended to lift the bar, did it have the constitutional power to do so? (3) If these two questions be answered in the affirmative, was it the intent to include actions already pending?

1. It is quite obvious that at the time the securities were sold they were required by our law to be registered. The fact that a share of bank stock immune from registration was inseparably joined with stock which was nonimmune from registration for sale and transfer purposes would not immunize the corporate stock required to be registered. No authority or logic is necessary to sustain that holding. But see *Commr. of Banks* v. *Chase Securities Corp.*, 298 Mass. 285, 10 N. E. (2d) 472.

2. Since the stock was not registered the plaintiff is entitled to recover the purchase price unless barred by the

statute of limitations. *Vercellini* v. *U. S. I. Realty Co.*, 158 Minn. 72, 196 N. W. 672. The action is in tort. *Dreis* v. *Minnesota Petroleum Co.*, 189 Minn. 608, 611, 250 N. W. 563, 565.

3. The plain language of the proviso authorizes the bringing of all causes where the delivery of the stock had been made more than five years before the effective date of the limitation, if brought within one year from the effective date of the section, whether more than six years had elapsed since delivery or not; but it is the contention of the defendant that it should be interpreted as if it read "more than five years *and less than six years* shall have elapsed," etc.

The legislature acted promptly after our first opinion was filed. The inference is plain that it was dissatisfied with the law as laid down in that opinion and regarded it as unjust to the numerous plaintiffs who had bought this stock and had cases pending or had causes of action which would not be outlawed if the time subsequent to withdrawal from the state should be regarded as tolling the statute, as had been held in the federal court. *City Co. of New York* v. *Stern* (8 Cir.) 110 F. (2d) 601.

That it had all the cases similar to that at bar in mind can hardly be questioned, since in the general tenor of the section every aspect of them was covered. It was well known that a multitude of sales of this and other unregistered stock had been made in this state shortly before the 1929 crash. The evidence in this case shows about 500 sales of Chase units in Minnesota by this defendant in 1929. The legislature must have known that the great bulk of the violations of the statute had occurred prior to the crash and that few, if any, had occurred afterwards. As heretofore stated, defendant effected its withdrawal from the state in 1931. In the National City case (*Pomeroy* v. *National City Co.*, 209 Minn. 155, 296 N. W. 513), the withdrawal was effected in 1934. If the clause in the proviso relating to causes arising more than five years previously were to be interpreted as defendant contends, it would apply to few, if any, cases. Causes of action for such violations were not distinguished from those in deceit which under the prior law may or may not have accrued more than six years prior

to the effective date of the act. It is a rule of construction that provisos are limitations rather than extensions of legislative provisions (Minn. St. 1941, § 645.19), but all rules must yield to obvious legislative purpose; and where, as here, that purpose is expressed in clear language without qualification and the circumstances under which the law was enacted support the indicated purpose, we look to the intent expressed even if it is in a proviso when it should have been expressed without the use of the word "provided." Legislatures have habitually ignored the appropriate limitations of provisos (even those which they have themselves prescribed) and have used them to extend the scope of acts. When their purpose is clear, we are bound to give effect to it. *State ex rel. v. Browne*, 56 Minn. 269, 273, 57 N. W. 659. We regard the proviso here under consideration as lifting the bar of the general six year limitation.

4. It is the contention of defendant that the lifting of the bar of the statute in this case is a violation of the due process clauses of the state and federal constitutions. The leading case cited by plaintiff in support of the legislature's constitutional power to lift the bar is *Campbell v. Holt*, 115 U. S. 620, in which the Supreme Court drew the distinction between two kinds of statutes of limitations, those that prescribe a limit of time within which adverse possession of property may be challenged and those where time merely bars the plaintiff's remedy if the defendant chooses to rely on the bar. In the first class of cases something more occurs than the mere passage of time. The adverse holder has possession and claims title adversely to the record owner and thereby creates a vested right in himself which after the lapse of the time fixed by statute cannot be taken away from him against his will without violation of due process.

In the second class of cases the passage of time creates no vested right in the exemption from the remedy. As said in *Smart v. Baugh*, 3 J. J. Mar. (Ky.) 364, cited with approval in *Campbell v. Holt*, *supra*:

"* * * Time does not pay the debt, but time may vest the right of property. * * * The statute of

limitations only disqualifies the plaintiff to recover a debt by suit if the defendant rely on time in his plea. It is a personal privilege, accorded by law for reasons of public expediency; * * *

In *Campbell* v. *Holt*, The Supreme Court held that a statute which applied merely to the remedy did not vest such a right in the defendant that the legislature or, in that case, the constitution of the state of Texas, could not lift the bar of the limitation and thereby revive the cause. Strictly speaking, it is not a revival of the cause in the technical sense of that term as used in connection with abatement but merely a lifting of the bar against the remedy.

In *Kipp* v. *Johnson*, 31 Minn. 360, 363, 17 N. W. 957, 959, this court, speaking through Mr. Justice Mitchell, said, "No man has a vested right to a mere remedy, or in an exemption from it." In that case the distinction subsequently recognized in *Campbell* v. *Holt* was stated with approval. This court said (31 Minn. 362, 17 N. W. 958):

> "But what are often indiscriminately called statutes of limitation consist of two distinct classes: *First*, statutes of limitation, properly so called, where the prescription operates as the foundation of title to property in possession. The lapse of time limited by such statutes not only bars the remedy, but *extinguishes the right*, and vests a perfect title in the adverse holder. Stocker v. Berny, 1 Ld. Raym. 741; Leffingwell v. Warren, 2 Black 599, 605; Buller, Nisi Prius, 103. The *second* class are those which merely take away or suspend certain remedies or forms of action, but leave the property rights of the parties unaffected. This last class is rather an exemption from the servitude of certain forms of action than a means of the acquisition of title. In such a case, the legislature would have a perfect right to restore the remedy already barred, because it would not take away any vested rights of property."

It is true that in *Kipp* v. *Johnson* the court considered that the plaintiff had another remedy that had not been barred

by the statute which had been repealed, but we regard the court's statement of the law as quoted above as announcing the sound and logical rule even if there be no other remedy. In *House* v. *Carr*, 185 N. Y. 453, the court said:

> "It must be borne in mind that the Statute of Limitations in this state never pays or discharges a debt, but only affects the remedy. It would be within the constitutional power of the legislature to repeal the Statute of Limitations and revive claims, the enforcement of which have been barred by the statute for a generation."

We do not follow the logic of such cases as *Eingartner* v. *Illinois Steel Co.*, 103 Wis. 373, 79 N. W. 433, and *State* v. *C. & N. W. Ry.*, 132 Wis. 345, 112 N. W. 515, or the Illinois cases which regard the running of the statute as paying the debt.

We have been cited to no case where we have drawn any distinction between our interpretation of the due process clause in our state constitution and the interpretation given to the due process clause of the federal constitution by the Supreme Court of the United States. We do not find that *Campbell* v. *Holt* has been reversed or reconsidered and we regard it as sound law; and, certainly, so far as the federal constitution is concerned, it is binding on this court until reversed by the Supreme Court.

Statutes of limitation which only bar the recovery of a debt or damages for tort are a matter of legislative public policy or expediency and may be changed as legislative wisdom dictates. The bar of such statutes may be lifted without violating the due process clauses of either the state or federal constitutions. See also McElowney v. Wyatt, 44 W. Va. 711, 45 L. R. A. 609; Orman v. Arsdell, 12 N. M. 344, 67 L. R. A. 438.

We hold that the legislature did not violate the constitution by lifting the bar of the statute as applied to this case.

The case at bar is to be distinguished from a third class of cases where a cause of action is created by statute, such as Lord Campbell's Act, the Interstate Commerce Act, or

the Federal Employers Liability Act, and the same statute prescribes a period of limitation within which the cause must be brought. The weight of authority in such cases is that the period of limitation is a part of the cause of action, and if it is not brought within the time specified it may not be revived. Negaubauer v. G. N. Ry., 92 Minn. 184, 99 N. W. 620; Kannellos v. G. N. Ry. Co. 151 Minn. 157, 186 N. W. 389; Danzer & Co. Inc. v. Gulf & S. I. R. Co. 268 U. S. 633, 45 S. Ct. 612, 69 L. ed. 1126.

5. Does the proviso apply to cases already pending? We think it does even though it was passed subsequent to a determination by this court that the cause was barred. On this point we can do no better than to quote from Robinson v. Robins Dry Dock & Repair Co. 238 N. Y. 271, 281, 144 N. E. 579, 582, 36 A. L. R. 1310, 1315:

> "There is some conflict of decision in the various jurisdictions as to whether a case should be determined according to the law in effect when the judgment was rendered in the lower court or according to the law in effect at the time the cause was disposed of on appeal, but both reason and the weight of authority seem to point to the view that where a statute which is clearly intended to be retroactive and to apply to pending litigation is enacted after judgment and pending appeal, the appellate court may dispose of the case in accordance with the law as changed by the statute. We have already pointed out that in the case of Danforth v. Groton Water Co. (178 Mass. 472, 86 A. S. R. 495, 59 N. E. 1033), the Massachusetts Supreme Court upon reargument reversed a judgment of the lower court which was correct when rendered because pending the appeal the bar of the earlier statute was repealed. 'It is in the general true that the province of an appellate court is only to inquire whether a judgment when rendered was erroneous or not. But if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed, or its obligation denied.' (U. S. v. Schooner Peggy, 1 Cranch, 103 (2 L. ed.

49)). See, also, Dinsmore v. Southern Express Co., 183 U. S. 115 (46 L. ed 111, 22 S. Ct. 45); Un. Pac. R. R. v. Snow, 231 U. S. 204 (58 L. ed. 184, 34 S. Ct. 104))."

Since the evidence is compelling that defendant sold plaintiff unregistered stock in violation of the statute, she is entitled to recover the purchase price.

Judgment affirmed.

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## APPENDIX J.

In appellant's petition for rehearing to the Minnesota Supreme Court, one of the grounds urged therefor was as follows:

"Defendant respectfully requests that this petition for rehearing be granted for the above general reasons and because this Court overlooked or ignored the following:

"II. In deciding that the legislature intended to revive barred claims generally, the Court failed to consider these factual and legal matters:

"1. There is no record evidence to support such findings;

"2. Defendant had no opportunity to submit evidence on legislative intent at the original trial (the law not being in existence then) and it was denied the right to do so on its motion for a new trial. It is entitled to know the facts, if any, of which the lower Court (if it did) and this Court seemingly took judicial notice, and it is entitled to the opportunity to submit evidence to refute the erroneous assumption made. If this Court now refuses to afford defendant such opportunity (by remanding or referring the case for evidence on this issue), defendant will be

denied a fair trial and due process of law in violation of Section 1 of the 14th Amendment of the Constitution of the United States and Section 7 of Article 1 of the Constitution of this state;

"3. The Court's assumption of intent, based on sources outside the record and unknown to defendant and not specified by either the trial court or this Court, is contrary to all obtainable and competent oral and documentary evidence which would show the true legislative intent—the intent of the Securities Commissioner who was the sponsor of the bill, the intent of the legislative committeemen who considered the bill, and its actual history in the legislature;

"4. An intention to revive barred claims cannot be spelled out of an assumed dissatisfaction with the *Pomeroy* case which decided only the tolling question;

"5. The finding is contrary to all reasonable interpretation and inferences from the clear language of the law and surrounding circumstances and to established rules of statutory construction applicable thereto including rules adopted by the legislature at the same time that the limitations provision was enacted (Ch. 492, § 16, *Laws of Minn. 1941*).

## APPENDIX K.

STATE OF MINNESOTA.

Office of Clerk of Supreme Court.

St. Paul, Minn.

February 23, 1944.

33458

(Ruth Chase Donaldson), Frank A. Donaldson and Frank A. Donaldson, Jr., Executors of the Estate of Ruth Chase Donaldson, Deceased, Substituted as Respondents, *Respondents*,

*vs.*

Chase Securities Corporation, Now Known as Amerex Holding Co., *Appellant*.

Sir:

You will please take notice that on this date the following order was entered in the above entitled cause:

Ordered, that the petition for reargument herein be and the same hereby is denied and stay vacated.

Yours respectfully,

Grace Kaercher Davis,
*Clerk Supreme Court.*

## APPENDIX L.

STATE OF MINNESOTA, SUPREME COURT.

33458

(RUTH CHASE DONALDSON), FRANK A. DONALDSON and FRANK A. DONALDSON, JR., Executors of the Estate of Ruth Chase Donaldson, Deceased, Substituted as Respondents, *Respondents*,

*vs.*

CHASE SECURITIES CORPORATION, a Corporation, Now Known as AMEREX HOLDING CORPORATION, *Appellant*.

Pursuant to an order of Court heretofore duly made and entered in this cause it is determined and adjudged that the judgment of the Court below, herein appealed from, to-wit: of the District Court within and for the County of Hennepin be and the same hereby is in all things affirmed.

And it is further determined and adjudged that respondents herein, do have and recover of appellant herein the sum and amount of Three Hundred Eighty-Seven and 43/100 Dollars ($387.43) costs and disbursements in this cause in this Court, and that execution may be issued for the enforcement thereof.

Dated and signed February 23, 1944.

BY THE COURT.

Attest:

GRACE KAERCHER DAVIS,
*Clerk*.

STATEMENT FOR JUDGMENT.

Statutory Costs, $25.00; Printer, $361.30; Clerk, $——; Acknowledgment, $.50; Return; —; Postage and Express, $.63; Appeal Bond, $——; Transcript, $——; Total, $387.43.
Satisfaction of Judgment filed.

Therefore the above judgment is duly satisfied in full and discharged of record.

Attest:

——— ———,
*Clerk.*

By ——— ———,
*Deputy.*

STATE OF MINNESOTA,
*Supreme Court, ss:*

I, Grace Kaercher Davis, Clerk of said Supreme Court, do hereby certify that the foregoing is a full and true copy of the Entry of Judgment in the cause therein entitled, as appears from the original remaining of record in my office; that I have carefully compared the within copy with said original and that the same is a correct transcript therefrom.

Witness my hand and seal of said Supreme Court at the Capitol, in the City of St. Paul, February 23, 1944.

[SEAL.]

GRACE KAERCHER DAVIS,
*Clerk.*

By MAE SHERMAN,
*Deputy.*